APPENDIX A — MEMORANDUM OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT FILED NOVEMBER 5, 2005

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 02-56222

D.C. No. CV-97-00615-WJR

EDUARDO MORENO LAPARADE,

Plaintiff-counter-defendant,

v.

MARIO MORENO IVANOVA, an individual & as Executor of the Estate of Mario Moreno Reyes;

Defendant-cross-defendant-Appellant,

COLUMBIA PICTURES INDUSTRIES, INC., a California corporation,

Defendant-counter-claimant-cross-claimant-Appellee.

Appendix A

No. 03-55431

D.C. No. CV-97-00615-WJR

EDUARDO MORENO LAPARADE,

Plaintiff,

v.

COLUMBIA PICTURES INDUSTRIES, INC., a California corporation;

Defendant-Appellant,

MARIO MORENO IVANOVA, an individual and as executor of the estate of Mario Moreno Reyes; MARIO MORENO REYES,

Defendants-Appellees.

No. 03-56207

D.C. No. CV-03-01033-DT

MARIO MORENO IVANOVA; ESTATE OF MARIO MORENO REYES (A/K/A CANTINFLAS);

Plaintiffs-Appellants,

TIMOTHY CHARLES RILEY, Esq.,

Appellant,

Appendix A

v.

COLUMBIA PICTURES INDUSTRIES, INC.,
a Delaware Corporation,

Defendant-Appellee.

Appeal from the United States District Court
for the Central District of California
William J. Rea and Dickran Tevizian,
District Judges, Presiding

Argued and Submitted September 13, 2004
Pasadena, California

Before: THOMPSON, SILVERMAN, and WARDLAW, Circuit Judges.

MEMORANDUM*

These consolidated appeals arise from a bench trial before the Hon. William J. Rea and subsequent rulings by the Hon. Dickran Tevrizian. We have jurisdiction under 28 U.S.C. § 1291.

The appeals involve a dispute between Mario Moreno Ivanova, individually and as Executor of the Estate of Mario Moreno Reyes ("Ivanova") and Columbia Pictures Industries ("Columbia") over the rights to Spanish language motion

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

pictures starring Ivanova's deceased father, Mario Moreno Reyes, a/k/a "Cantinflas." Columbia's and Ivanova's competing claims to ownership of the worldwide intellectual property rights and related rights in Cantinflas motion pictures were litigated before District Judge Rea in a three-phase bench trial. *(Eduardo Moreno Laparde v. Columbia Pictures Industries, Inc., et al.*, Case No. CV 97-0615 WJR (CTx)).

After conducting the second phase of the trial, the court permanently enjoined Ivanova from licensing, distributing, marketing or otherwise exploiting or benefitting from 34 Cantinflas motion pictures. In violation of this injunction, Ivanova licensed certain motion pictures for DVD release and refused to turn over the film elements as ordered by the court. The court held Ivanova in contempt and ordered him to appear and pay daily fines.[1] Ivanova failed to do so and the court issued a warrant for his arrest. Ivanova has not surrendered to the court nor has he presented himself for arrest.

Within weeks of the entry of judgment in the trial before Judge Rea, Ivanova filed a "new" action against Columbia (*Ivanova v. Columbia Pictures*, Central District Case No. CV 03-1033 DTT (CWx)), which was assigned to the Hon. Dickran Tevrizian. In this "new" action, Columbia filed counterclaims and a motion for sanctions under Rule 11, arguing that Ivanova's claims were barred by the judgment

1. Prior to the entry of judgment, Ivanova was also found in contempt for disobeying court orders by litigating claims in Mexico, refusing to honor Columbia's refusal rights, and negotiating for distribution of the motion pictures.

previously entered by Judge Rea, and were also barred by a 1994 stipulated judgment.

In an order filed June 9, 2003, Judge Tevrizian determined that the bulk of Ivanova's claims were indeed barred, and struck those claims. Judge Tevrizian awarded Rule 11 sanctions in favor of Columbia and against Ivanova and his counsel for having filed the barred claims. The sanctions were in the sums of $38,651.75 for attorney fees and $857.52 for costs. In determining the amount of the attorney fees award, the court reduced the hourly rates claimed by Columbia's attorneys, and reduced the number of billed hours by 50%.

Thereafter, Ivanova's counsel failed to appear at a scheduling conference to deal with the copyright claims that remained in the case. As a sanction, Judge Tevrizian ordered judgment entered against Ivanova on those remaining claims. The court also ordered judgment entered in favor of Columbia on its counterclaims. Ivanova moved for relief under Federal Rule of Civil Procedure 60(b), arguing that counsel's failure to attend the scheduling conference was due to excusable neglect. The court denied the motion.

The final judgment entered by Judge Tevrizian contained, *inter alia,* a permanent injunction which provided that "Ivanova shall immediately withdraw and/or cause to be withdrawn any registrations or filings whereby the Estate claims ownership of any rights, including copyrights, in any of the 34 Pictures." Ivanova's requests, filed in the district court and in this court, for a stay of the injunction were denied.

Ivanova failed to comply with the injunction issued by Judge Tevrizian. He refused to withdraw the registrations by which he claimed ownership of the 34 Cantinflas motion pictures and he notified the court that he would not withdraw the Mexican copyrights.[2] As a result, he was held in contempt by Judge Tevrizian and a warrant was issued for his arrest. Consistent with his response to the arrest warrant issued by Judge Rea, Ivanova failed to surrender or present himself for arrest pursuant to the warrant issued by Judge Tevrizian.

Ivanova appeals Judge Rea's judgment on three grounds (Case No. 02-56222). First, he contends that the district court lacked personal and subject matter jurisdiction. Second, he argues the district court erred in limiting phase two of the trial to U.S. contract law. Third, he argues the district court's extraterritorial injunction was an abuse of discretion. In Case No. 03-56207, Ivanova and his attorney each appeals Judge Tevrizian's Rule 11 sanction order; Ivanova also appeals the judgment.

In Case No. 03-55431, Columbia appeals Judge Rea's failure to order disgorgement of money Ivanova received from licensing Cantinflas motion pictures in Mexico.

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2. Ivanova acknowledges that he has distributed 8 Pictures on DVD in Mexico in violation of the district court's order. "The Estate informed the court that it believed the injunction regarding the 8 Pictures—issued on behalf of no one—was issued without a legitimate basis for jurisdiction. The Estate informed the court that, in order to survive, it was going to violate the order. . . ."

Appendix A

A. Jurisdiction

The district court had subject matter jurisdiction pursuant to 17 U.S.C. § 104A and 28 U.S.C. § 1338(a). Personal jurisdiction existed over Ivanova in the case before Judge Tevrizian because Ivanova was the plaintiff in that case. In the case before Judge Rea, personal jurisdiction existed over Ivanova because he made a general appearance by actively participating in the trial. *Hilao v. Estate of Marcos,* 95 F.3d 848, 854 (9th Cir.1996) ("A general appearance, of course, subjects the party who appears to the personal jurisdiction of the court."). Ivanova called witnesses, adduced evidence probative of the merits, and made numerous motions on the merits including a motion for summary judgment.

B. Fugitive Disentitlement

Columbia argues that Ivanova's appeals of Judge Rea's judgment in Case No. 02-56222, and of Judge Tevrizian's sanctions order and judgment in Case No. 03-56207, should be dismissed under the fugitive disentitlement doctrine. We agree. Under that doctrine, a court may dismiss a civil appeal where the party seeking relief is a fugitive from justice. *See, e.g., United States v. Van Cauwenberghe,* 934 F.2d 1048, 1054 (9th Cir.1991); *Conforte v. Comm'r,* 692 F.2d 587, 589-90 (9th Cir.1982).

Ivanova has refused to abide by the district court's orders, and has refused to surrender to the warrants issued for his arrest. He is a fugitive from justice. Accordingly, we dismiss Ivanova's appeals in Case Nos. 02-56222 and 03-56207. Because there is an identity of interest between Ivanova and

the Estate of Mario Moreno Reyes (Ivanova is the executor of the Estate and claims to be the sole heir), the Estate must share the same fate. We therefore dismiss the Estate's appeals as well.

C. Rule 11 Sanctions

Ivanova is precluded by the fugitive disentitlement doctrine from challenging Judge Tevrizian's Rule 11 sanctions imposed against him. Ivanova's counsel is not so precluded, but we affirm the sanctions order against him on the merits. The contract claims resolved by Judge Rea determined that Columbia owned all of the right, title and interest in 28 of the Cantinflas motion pictures. This foreclosed a new attempt to obtain the same rights in the guise of copyright claims filed in the new action before Judge Tevrizian. Although there were some claims in the new filing that were not precluded by Judge Rea's judgment, the claims that were precluded were substantial, formed the nucleus of the claims disputed by the parties, and supported the district court's award of Rule 11 sanctions. Thus, we affirm Judge Tevrizian's imposition of those sanctions against Ivanova and his counsel. We decline to reduce the amount of the sanctions, or to remand to the district court for it to consider a reduction. The district court has already made a substantial reduction in the hourly rate and the number of hours claimed by Columbia's attorneys.

D. Denial of Disgorgement

In Case No. 03-55431, Columbia argues that Judge Rea erred by declining to order disgorgement of the money Ivanova received from licensing Cantinflas motion pictures in Mexico.

Disgorgement is an equitable remedy and a district court has "broad discretion" in deciding whether to employ it. *S.E.C. v. Clark*, 915 F.2d 439, 454 (9th Cir.1990). Here, Columbia offers no reason why it cannot pursue its disgorgement claim in the courts of Mexico and obtain such legal relief as to which it may be entitled. Thus, from what appears in the record before us, Columbia has an adequate remedy at law that it can pursue. "It is a basic doctrine of equity jurisprudence that courts of equity should not act ... when the moving party has an adequate remedy at law...." *Mort v. United States*, 86 F.3d 890, 892 (9th Cir.1996) (quoting *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 381 (1992)) (alterations in original).

The district court's failure to include in its judgment an express ruling on the disgorgement claim does not mean the court overlooked the claim. The claim was presented to the court, and by not granting it, the court denied it. We conclude that, in Case. No. 03-55431, the district court did not abuse its discretion by declining to order disgorgement.

E. Conclusion

In Case Nos. 02-56222 and 03-56207, Ivanova's appeals are dismissed pursuant to the fugitive disentitlement doctrine.

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The district court's Rule 11 sanctions order against Ivanova's counsel, and against Ivanova, in Case No. 03-56207, is affirmed. The district court's judgment, challenged by Columbia in Case No. 03-55431 is affirmed.

Columbia shall recover all of its costs of appeal in Case Nos. 02-56222 and 03-56207. Columbia did not prevail in its appeal in Case No. 03-55431, and it shall not recover its costs for that appeal; nor shall Ivanova recover costs for that appeal, being precluded therefrom by the fugitive disentitlement doctrine.

The unopposed request for Joinder in Appellant's Briefs is granted. None of the other pending motions filed by the parties, and as yet not ruled upon by this court, require further discussion. All pending motions are denied.

Appeals DISMISSED in part and AFFIRMED in part. Costs ALLOCATED as stated above. Pending motions DENIED. No request by any party for reconsideration of the denial of any pending motion shall be filed or entertained.

APPENDIX B — PHASE II BENCH TRIAL: FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA DATED JUNE 7, 2002

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. CV 97-0615 WJR (CTx)

EDUARDO MORENO LAPARADE,

Plaintiff,

v.

COLUMBIA PICTURES INDUSTRIES, INC., a California corporation; MARIO MORENO IVANOVA, an individual, and as Executor of THE ESTATE OF MARIO MORENO REYES,

Defendants.

AND RELATED COUNTERCLAIMS.

PHASE II BENCH TRIAL:
FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter was heard by the Court in a second phase of a bench trial conducted on August 7, 2001 and February 26, 2002 through March 19, 2002. Timothy C. Riley appeared on behalf of Defendant Mario Moreno Ivanova ("Ivanova"). Henry J. Tashman and Jennifer L. Brockett appeared on behalf of Defendant Columbia Pictures Industries, Inc. ("Columbia"). Based on the evidence presented at trial, the post-trial briefs,

the parties proposed findings of fact and conclusions of law, and the applicable law, the Court now makes the following Findings of Fact and Conclusions of Law. *See* Fed. R. Civ. P. 52.

FINDINGS OF FACT

1. This action primarily is one for interpleader and declaratory relief regarding who owns the worldwide intellectual property rights and related rights, in whole or in part, for thirty-four motion pictures ("Motion Pictures') starring Mario Moreno Reyes, better known by his stage name "Cantiflas."

2. This action commenced on January 30, 1997, when Eduardo Moreno Laparade ("Laparade"), Cantinflas' nephew, filed a complaint seeking declaratory relief against Columbia and Ivanova, individually and as executor of the estate of Cantinflas. Laparade claimed he held certain rights in the Motion Pictures through succession.

3. In response to Laparade's Complaint, Columbia filed crossclaims and counterclaims for declaratory relief and statutory interpleader against Laparade, Ivanova, Joyce Jett, Natasha Gelman and Authors' Rights Restoration Corp. ("ARRC").

4. Joyce Jett was Cantiflas' common-law ex-wife. The late Natasha Gelman was the widow of Jacques Gelman ("Gelman"). Jacques Gelman was Cantinflas' business partner and part-owner of the various production companies that produced the Motion Pictures. Janet Neschis is the Executor of the Gelman Estate, which was substituted into this action following the passing of Ms. Gelman. Ms. Neschis is a partner in the law firm of McLaughlin & Stern. Mrs. Neschis also is the daughter of Sidney

E. Cohn, who represented Cantinflas, Gelman and their production companies in a number of matters.

5. Prior to Phase I of trial, Columbia and ARRC settled with all parties except Ivanova. Pursuant to the settlement, Laparade, Jett and Gelman, *inter alia*, assigned their rights, if any, in the Motion Pictures to Columbia, and were thereafter dismissed from the case. ARRC's dispute with Columbia and Ivanova was tried in Phase I of trial.

6. Phase I of the bench trial was conducted on April 24, 2001 through May 2, 2001. On May 30, 2001, the Court held that "under the Collaboration Doctrine, and consequently under the laws of Mexico, the producer of a film is the author of the film. . . . Consequently, it is only the producers or the successors to the producers who are eligible to any restoration rights in the Motion Pictures." (May 30, 2001 Ord. at 12.)

The Motion Pictures

7. Columbia has a long history of business dealings, dating back to 1946, with Cantinflas, Gelman, and the various entities partly owned and/or controlled by Cantinflas and Gelman, including Posa Films, S.A. ("Posa"), Posa Films Internacional S.A. ("PFI"), Cantinflas Films, S.A. ("Cafisa"), Rioma Films, S.A. ("Rioma"), Alfa Films, S.A. ("Alfa"), and Telemont Anstalt Vaduz, a Liechtenstein entity ("Telemont"). Most or all of these entities have been dissolved and liquidated.

8. The Motion Pictures at issue in this litigation can be categorized into three groups based on their producers.

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9. Posa produced twenty of the motion pictures ("20 Motion Pictures"), which, in order of first date of release in Mexico, are titled as follows: (1) *Ni Sangre Ni Arena*, (2) *El Gendarme Desconocido*, (3) *Los Tres Mosqueteros*, (4) *El Circo*, (5) *Romeo y Julieta*, (6) *Gran Hotel*, (7) *Un Dia Con El Diablo*, (8) *Soy un Profugo*, (9) *A Volar Joven*, (10) *El Supersabio*, (11) *El Mago*, (12) *El Portero aka Puerto Joven*, (13) *El Siete Machos*, (14) *Si Yo Fuera Diputado*, (15) *El Bombero Atomico*, (16) *El Senor Fotografo*, (17) *Cabellero a la Medida*, (18) *Abajo El Telon*, (19) *El Bolero de Raquel*, and (20) *Sube y Baja*. The 20 Motion Pictures were released in Mexico between 1941 and 1959.

10. PFI produced six of the motion pictures ("6 Motion Pictures"), which, in order of first date of release in Mexico, are titled as follows: (1) *El Analfabeto*, (2) *El Extra*, (3) *Entrega Inmediata*, (4) *El Padrecito*, (5) *El Senor Doctor*, and (6) *Su Excelencia*. The 6 Motion Pictures were released in Mexico between 1961 and 1967.

11. Various production companies produced the last eight films at issue in this litigation ("8 Motion Pictures"). In order of release in Mexico, PFI produced the first three: *Por Mis Pistolas*, *El Profe* and *Un Quijote Sin Mancha*. Rioma produced the next three: *Conserje en Condominio*, *El Ministro y Yo* and *El Patrullero 777*, and it co-produced one picture --*Don Quijote Cabalga de Neuvo* -- with Oscar Producciones Cinematografica, S.A. Lastly, Cafisa produced the last of the 8 Motion Pictures, *El Barrendero*.[1]

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1. Laparade's initial pleadings asserted claims as to 39 films. Columbia and Ivanova assert claims only as to 34 of those films; the remaining five films (*No Te Enganes Corazon*, *Asi Es Mi Tierra*, *Aquila o Sol*, *El Signo De La Muerta* and *Ahi Esta El Detalle*) are not at issue here.

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The 20 Motion Pictures

12. Prior to 1959 and 1960, Posa -- the producer of each of the 20 Motion Pictures -- owned all right, title and interest to the 20 Motion Pictures, including all physical elements of the Motion Pictures.

13. Sidney E. Cohn, the attorney who represented Cantinflas, Gelman and Posa, planned and negotiated that Columbia would purchase the 20 Motion Pictures through a series of transfers. The basic structure of the sale was outlined in a November 18, 1959 Memorandum from Sidney E. Cohn to Columbia founder and board member Samuel Briskin. Although the details of the Buyout differ from that which was envisioned in Mr. Cohn's Memorandum, the basic structure was effectuated.

14. Specifically, in two agreements, dated January 15, 1959 and January 18, 1960, Posa sold all of its rights in the 20 Motion Pictures to Patientia Anstalt ("Patientia"), a Lichtenstein entity, as well as title to the film elements (negatives, prints, etc.) that embodied the works (hereinafter referred to as Film Rights), for payment in U.S. dollars. These contracts were found in Columbia's files and in Mr. Cohn's files in New York. Ivanova did not find copies of these contracts in Posa's files in Mexico.

15. In the first agreement, dated January 15, 1959, Posa transferred ten of the 20--Motion Pictures to Patientia, which were: (1) *El Mago*, (2) *El Portero*, (3) *El Siete Machos*, (4) *El Bombero Atomico*, (5) *Si Yo Fuera Diputado*, (6) *El Senor Fotografo*, (7) *Caballero A La Medida*, (8) *Abajo El Telon*, (9) *El Bolero De Raquel* and (10) *Sube y Baja*. Article 1 of that agreement states:

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> We, hereinafter referred to as "Seller" warrant and represent to you, hereinafter referred to as "Purchaser" that Seller [Posa] is the producer of and the sole and exclusive owner of the full, complete, unencumbered and marketable title of the ten (10) motion pictures listed in Article 2 hereof, and of each and all the rights, licenses and privileges hereinafter sold, assigned and transferred to Purchaser hereunder, and that Seller as the full right, power and authority to enter into and perform this agreement.

16. Article 3 of the agreement also expressly transfers full ownership of the intellectual property rights, as well as the film elements, from Posa to Patientia:

> Seller [Posa] hereby irrevocably sells, assigns, transfers and sets over to Purchaser [Patientia] said Ten Pictures, together with full, complete, unencumbered and marketable title thereto, as well as like title to all negatives, prints, and other physical properties thereof, as well as like in title in and to any and all literary, dramatic, and musical material used in said pictures or acquired in connection with the production thereof, including without limitation all of the following:
>
> . . .
>
> b) The original picture negatives of said pictures.
>
> c) All negatives, prints and other physical properties. . . .

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> g) All copyrights and rights to obtain copyrights and renewals thereof, . . . [and]
>
> h) All other rights of every kind and nature which are now owned or controlled by Seller [Posa] in and to said Ten Pictures or in the material from which the same was produced together with all of Seller's [Posa's] right, title and interest in and to the above.

17. Article 7 further states that Patientia was acquiring "the copyright and the right to obtain, renew and extend copyright" in the 10 Motion Pictures "free and clear of all claims on behalf of any third party."

18. This agreement was signed by Cantinflas on behalf of Posa and Cantinflas also signed a "sub-joinder" in the agreement, personally ratifying the transfer.

19. In the second agreement dated January 18, 1960, Posa transferred all of its rights in the remaining ten of the 20 Motion Pictures to Patientia, which were: (1) *Soy un Profugo*, (2) *A Volar Joven*, (3) *El Supersabio*, (4) *El Circo*, (5) *Romeo y Julieta*, (6) *El Gendarme Desconocido*, (7) *Ni Sangre Ni Arena*, (8) *Los Tres Mosgueteros*, (9) *Gran Hotel* and (10) *Un Dia Con El Diablo*.

20. The relevant language of the January 18, 1960 agreement is identical to that contained in the January 15, 1959 agreement.

21. Again, this agreement was signed by Cantinflas on behalf of Posa and Cantinflas also signed a "sub-joinder" in the agreement, personally ratifying the transfer.

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22. By an agreement dated February 23, 1960, Patientia sold the Film Rights in the 20 Motion Pictures to Movag Establishment Vaduz, also a Liechtenstein entity ("Movag"), for payment in U.S. dollars. The agreement specifically references the two Posa-Patientia agreements and states that Patientia holds "full, complete, unencumbered and marketable title in each of the 20 Motion Pictures," and is transferring "full, complete, unencumbered and marketable titles to said 20 Motion Pictures, all other rights licenses and privileges sold, granted and transferred to [Patientia] under the Buyout Agreements, with the benefit of all warranties and representations made to us by Posa thereunder."

23. This Patientia-Movag agreement was found in Columbia's files and in Mr. Cohn's files in New York. Ivanova did not find a copy of this contract in Posa's files in Mexico.

24. By an agreement dated February 24, 1960, Movag sold the Film Rights in the 20 Motion Pictures to Showthern, Ltd., a U.K. corporation ("Showthern"). This agreement references all three prior agreements, and states that Movag transferred to Showthern all "licenses and privileges under the Buyout Agreements in, to, or in connection with said 20 Motion Pictures, including without limitation, full, complete and marketable title to said motion pictures. . . ." The agreement indicates it was witnessed by Mr. Cohn, Cantinflas' attorney.

25. By an agreement dated March 10, 1960, Showthern sold the Film Rights in the 20 Motion Pictures to Columbia Pictures Corporation, Ltd. ("CPCL"). At the time, CPCL was a British subsidiary of Columbia Pictures Corporation ("CPC"), which, in turn, is the corporate predecessor to Columbia; CPCL currently is an affiliate of Columbia.

26. Again, the Showthern-CPCL agreement references the prior transfer agreements and states "the Assignor [Showthern] hereby sells and assigns unto the assignee ALL THOSE said film rights comprised in and assigned by the Rights Agreements and all other (if any) the benefit of such Agreements in so far as the same has passed to the Assignor TO HOLD the same unto the Assignee [CPCL] absolutely. . . ."

27. Although the document has only type-written signatures, Kenneth Maidment -- who, at the time-of this transaction, was CPCL's secretary -- credibly testified that the agreement was fully-executed by all signatories and sealed, and that the document presented into evidence represents a conformed copy of the agreement. Notwithstanding a diligent search, Columbia was unable to locate a copy of the agreement with signatures and seal. The Court rejects the suggestion this was merely a draft document.

28. On May 27, 1987, CPCL signed a Power of Attorney appointing Columbia to be its "true and lawful attorney and/or agent, thereby empowering Columbia, in CPCL's "name, place and stead" to "procure and maintain the protection of (CPCL's) copyright" in all films owned by CPCL, and to "appoint attorneys and counsel to represent [CPCL] in the protection and enforcement of such copyright and proprietary rights. . . ."

29. On March 13, 2002, CPCL transferred the Film Rights in the 20 Motion Pictures to Columbia, via a nunc pro tunc assignment effective as of March 11, 1960.

30. Numerous other documents corroborate this chain of title.

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31. Ivanova relies upon a 1963 agreement transferring title to the 20 Motion Pictures from Posa to Cantinflas to support his claim of ownership of the 20 Motion Pictures. First, Posa sold the same 20 Motion Pictures to Patientia in 1960 -- three years prior -- so Posa would not have had anything to transfer in 1963. Second, Ivanova's testimony was contradictory regarding the circumstances under which this agreement was located. Third, unlike the other agreements transferring rights in the films, Ivanova's 1963 agreement was not found in Mr. Cohn's, Cantinflas' attorney, files. And fourth, this transfer is not corroborated by any other documents. In fact, it is contradicted by dozens of documents. Due to the numerous factors undermining the validity and authenticity of this 1963 transfer, the Court need not specifically address the authenticity of the signatures.

32. The Court finds Ivanova's 1963 transfer agreement to not be reliable, credible evidence sufficient to support Tvanova's claim of ownership.

33. Ivanova testified that he is in possession of all of the original picture negative reels for 33 of the 34 Motion Pictures, which he testified he inspected in early 2002.

34. Ivanova's testimony was strongly contradicted by two witnesses: Vanessa O'Kelley, an Inspector Printer in the Motion Picture Conservation Center of the Library of Congress, and Grover Crisp, Sony Pictures Entertainment's Vice President of Asset Management and Film Restoration.

35. Ms. O'Kelley testified that the Library of Congress possessed original picture negatives for five of the 20 Motion

Pictures. Ms. O'Kelley was a credible witness, experienced in the matters to which she testified, and the Court finds her testimony believable.

36. Mr. Crisp testified, with reference to a computer database printout maintained in the ordinary course of business, that Columbia possessed film elements for all 34 Motion Pictures, including original picture negatives for 16 of the films. Notwithstanding the errors contained in the database printout, the Court finds Mr. Crisp to have been a credible witness, experienced in the matters to which he testified, and the Court finds Mr. Crisp's testimony believable.

The 6 Motion Pictures

37. Prior to 1968, PFI -- the producer of the 6 Motion Pictures -- owned all right, title and interest to the 6 Motion Pictures, including all physical elements of the 6 Motion Pictures.

38. Prior to January 31, 1968, Telemont acquired from PFI all non-U.S. rights in the 6 Motion Pictures, and Alfa acquired from PFI all U.S. rights in the 6 Motion Pictures. These transfers were not disputed.

39. On January 31, 1968, through two separate agreements, Telemont and Alfa then sold the rights in the 6 Motion Pictures to "Columbia Pictures Corporation," the predecessor to Columbia. A copy of this contract was found in Columbia's files and in Mr. Cohn's files in New York. Ivanova did not find a copy of this contract in PFI's files in Mexico.

40. Both of these contracts contain language similar to that which is in the agreements relating to the 20 Motion Pictures.

41. Numerous other documents corroborate this chain of title.

42. Ivanova relies upon a 1972 agreement transferring title to the 6 Motion Pictures (as well as 3 of the 8 Motion Pictures) from PFI to Cantinflas to support his claim of ownership of the 6 Motion Pictures.

43. The Court finds this evidence to be incredible for the same reasons the Court finds Ivanova's 1963 agreement to be not credible, and finds this evidence is not sufficient to support Ivanova's claim of ownership.

The 8 Motion Pictures

44. The last set of motion pictures at issue in this litigation are the 8 Motion Pictures. The interests Columbia and Ivanova claim in the 8 Motion Pictures are different from those asserted in the other 26 Motion Pictures. Specifically, Ivanova contends that he owns the 8 Motion Pictures as the putative successor of Cantinflas. Columbia, on the other hand, asserts more limited rights in the 8 Motion Pictures, including distribution rights and rights of first refusal.[2]

45. Ivanova's asserted ownership claim in three of the a Motion Pictures (*Por Mis Pistolas*, *Un Quijote Sin Mancha* and *El Profe*) rests on a 1972 agreement transferring the rights in these films from PFI to Cantinflas, which this Court finds to be not credible.

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2. Columbia, however, makes no claim of rights as to the film *Don Quijote Cabalga de Nueva*.

46. Ivanova did not present any evidence to support his ownership claim in the remaining five films: *Don Quijote Cabalga de Nuevo, Conserie en Condominio, El Ministro y Yo, El Patrullero 777* and *El Barrendero.*

47. The Court need not make findings as to Columbia's interests in the 8 Motion Pictures for the reasons stated below.

CONCLUSIONS OF LAW

48. To the extent any of the following conclusions of law are deemed to be findings of fact, or mixed questions of law and fact, they are incorporated into the "Findings of Fact." Likewise, to the extent any of the foregoing findings of fact are deemed to be conclusions of law, they are incorporated herein.

49. The Court has subject matter jurisdiction over this action pursuant to (i) its ongoing jurisdiction to enforce the 1994 Stipulated Judgment, (ii) Statutory Interpleader because there are diverse claimants as to the interpleader *res* that Columbia has deposited with the Court, and (iii) the Copyright Act, Chapter 17 of the United States Code.

50. As to the 20 Motion Pictures, Posa was the author and owner of all right, title and interest to the 20 Motion Pictures.

51. Through the various agreements referenced above, Posa transferred indirectly to Showthem the Film Rights in the 20 Motion Pictures. Each of the documents reflecting these transactions satisfy the writing requirement of 17 U.S.C. § 204.

52. Because Posa initially transferred the Film Rights in the 20 Motion Pictures to Patientia in 1959 and 1960, Posa could not have transferred those same 20 Motion Pictures to Cantinflas in 1963. Therefore, even assuming Ivanova's 1963 transfer agreement was authentic, it was an ineffective transfer of rights because, at that time, Posa had nothing to transfer.

53. The Court concludes that the March 10, 1960 Showthern-CPCL Buyout was executed and constituted an effective transfer. Furthermore, this conformed-copy agreement satisfies 17 U.S.C. § 204 (a).

54. Notably, although Ivanova most strongly takes issue with the Showthern-CPCL link in the chain of transfers from Posa indirectly to Columbia, a finding that the Showthern-CPCL transfer was not properly effectuated would not support Ivanova's claim of ownership; it would only establish that Showthern, not Ivanova and not Columbia, owns the films. Therefore, notwithstanding this Court's conclusion that CPCL validly received the Film Rights in the 20 Motion Pictures, a contrary finding would be of little moment.

55. CPCL then effectively transferred the Film Rights in the 20 Motion Pictures to Columbia through a Power of Attorney and a *nunc pro tunc* assignment.

56. Columbia has satisfied its burden to show that it owns the Film Rights in the 20 Motion Pictures. In contrast, Ivanova has not satisfied his burden to show that he owns the Film Rights in the 20 Motion Pictures. The Court concludes that Ivanova's evidence regarding possession of the original pictures negatives is legally irrelevant, and, notwithstanding this fact, not credible.

57. As to the 6 Motion Pictures, PFI was the author and owner of all right, title and interest to the 6 Motion Pictures.

58. Prior to 1968, PFI transferred the Film Rights in the 6 Motion Pictures to Telemont (non-U.S. rights) and Alfa (U.S. rights). Each of the documents reflecting these transactions satisfy the writing requirement of 17 U.S.C. § 204.

59. On January 31, 1968, Telemont and Alfa sold to Columbia the Film Rights to the 6 Motion Pictures. Each of the documents reflecting these transactions satisfy the writing requirement of 17 U.S.C. § 204.

60. Because PFI transferred the Film Rights in the 6 Motion Pictures to Telemont and Alfa prior to 1968, and they, in turn, transferred the Film Rights in the 6 Motion Pictures to Columbia on January 31, 1968, PFI could not have transferred those same 6 Motion Pictures to Cantinflas in 1972. Therefore, even assuming Ivanova's 1972 transfer agreement was authentic, it was an ineffective transfer of rights because, at that time, PFI had nothing to transfer.

61. Columbia has satisfied its burden to show that it owns the Film Rights in the 6 Motion Pictures. In contrast, Ivanova has not satisfied his burden to show that he owns the Film Rights in the 6 Motion Pictures.

62. As to the 8 Motion Pictures, the Court concludes that Ivanova's 1972 agreement is not credible, authentic evidence sufficient to support a finding that Cantinflas owned three of the 8 Motion Pictures.

63. Ivanova has not offered any evidence supporting his claim that Cantiflas owned the remaining five of the 8 Motion Pictures.

64. Having failed to demonstrate ownership of the 8 Motion Pictures, Ivanova does not have the power to trigger Columbia's rights, if any, in the 8 Motion Pictures. Given this conclusion, the Court need not make findings or conclusions as Columbia's rights to the 8 Motion Pictures.

CONCLUSION

1. Based on the foregoing Findings of Fact and Conclusions of Law, the Court hereby declares Columbia to be the owner of all rights, title and interest in the 20 Motion Pictures and the 6 Motion Pictures. Ivanova holds no ownership interest in the 20 Motion Pictures or the 6 Motion Pictures. Ivanova's rights, if any, to receive motion picture participations with respect to these 26 Motion Pictures as set forth in the 1994 Stipulated Judgment shall be determined in the action entitled *Columbia Pictures Industries, Inc. v. Ivanova*, CV 01-1969 WJR (AJWx). Ivanova holds no ownership rights in or to the 8 Motion Pictures.

2. Because Columbia has demonstrated that its distribution of the 26 Motion Pictures is in accordance with its ownership rights, and because Ivanova has not established any right to distribute the 8 Motion Pictures (or any of the other films), the Court hereby orders that all funds Columbia has deposited into the interpleader account plus any accrued interest be immediately returned to Columbia.

3. Because Ivanova has not established his ownership of the 8 Motion Pictures, and, therefore, has no power to trigger any

rights Columbia may have in those films, the Court hereby orders that the $165,000 that Columbia deposited into the 2001 Court Account (in accordance with Columbia's purported exercise of its right of first refusal, triggered by Ivanova under the assumption Ivanova had the right to trigger such action) be immediately returned to Columbia.

4. Columbia having shown success on the merits, irreparable injury, inadequacy of legal remedies, and that the balance of equities favors injunctive relief, *Walters v. Reno*, 145 F.3d 1032, 1048 (9th Cir. 1998), the Court hereby permanently enjoins Ivanova, his agents, servants, employees and attorneys, and those in active concert or participation with him or them, from licensing, distributing, marketing, offering for distribution or sal, or otherwise exploiting or benefitting from any of the 34 Motion Pictures. This permanent injunction acts to vacate and supersede the preliminary injunctions entered on August 10, 2001 and November 21, 2001.

5. Ivanova is hereby ordered to turn over to Columbia all film elements for the 26 Motion Pictures that he may have in his possession, custody or control.

6. Because Ivanova has not established any rights in the 8 Motion Pictures, the Court hereby orders that any film elements for the 8 Motion Pictures that Ivanova may have in his possession, custody or control be turned over to the Court, to be held at Consolidated Film industries ("CFI"), at Columbia's expense. No party shall have access to these film elements absent prior order from this Court.

7. With regard to the film canisters stored at CFI pursuant to this Court's March 15, 2002 Order, the Court hereby vacates

that order subject to the following: Columbia and Ivanova shall, on an agreed upon date no later than 60 days from the entry of these Findings of Fact and Conclusions of Law, jointly inspect the contents of the film canisters. Any film elements belonging to the 26 Motion Pictures shall be released to Columbia. Any film elements belonging to the 8 Motion Pictures shall be maintained in accordance with paragraph 6, above. Columbia's $1.00 security deposited with the Court pursuant to the March 15, 2002 Order shall be returned to Columbia.

8. With regard to attorneys' fees and cost 6, the Court hereby orders the parties to submit briefing on the issue pursuant to the following schedule: Columbia shall personally serve and file its briefing within 30 days from entry of these Findings of Fact and Conclusions of Law. Ivanova shall personally serve and file its response within 14 days of service of Columbia's briefing. Columbia shall personally serve and file any reply within 7 days of service of Ivanova's response.

9. Additionally, the contempt award of $15,413.72 ordered by this Court on February 15, 2002, shall be paid immediately by Ivanova to Columbia. The Court declines to require Ivanova to post a security for remaining sanctions and costs. The hearing previously set for June 10, 2002, is hereby taken off calendar.

IT IS SO ORDERED.

DATED: June 7, 2002

s/ William J. Rea
WILLIAM J. REA
United States District Judge

APPENDIX C — ORDER GRANTING COLUMBIA'S MOTION FOR PRELIMINARY INJUNCTION OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA FILED NOVEMBER 20, 2001

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. 97-0615 WJR (CTx)

Date: November 16, 2001
Time: 9:30 a.m.
Dept.: Courtroom of the
Honorable William J. Rea

EDUARDO MORENO LAPARADE,

Plaintiff,

v.

COLUMBIA PICTURES INDUSTRIES, INC., a California corporation; MARIO MORENO IVANOVA, an individual,-and as Executor of THE ESTATE OF MARIO MORENO REYES,

Defendants.

AND RELATED CROSS-CLAIMS, COUNTERCLAIMS AND THIRD PARTY CLAIMS

Appendix C

ORDER GRANTING COLUMBIA'S MOTION FOR A PRELIMINARY INJUNCTION

The Motion for a Preliminary Injunction, brought by Columbia Pictures Industries, Inc. ("Columbia"), came on regularly for hearing on November 16, 2001, at 9:30 a.m. Henry J. Tashman and Jennifer L. Brockett of Davis Wright Tremaine LLP appeared on behalf of Columbia. Timothy C. Riley of Riley & Riley appeared on behalf of Mario Moreno Ivanova, individually and as executor of the estate of Mario Moreno Reyes ("Ivanova"). Having considered the memoranda and evidence submitted in support of and in opposition to the Motion, all admissible evidence offered by the parties, all relevant authorities, the arguments of counsel, and all other matters presented to the Court, **IT IS HEREBY ORDERED THAT**:

Ivanova, his agents, servants, employees and attorneys, and those in active concert or participation with him or them, are prohibited from licensing, marketing, offering for distribution or sale or otherwise exploiting or benefiting from any of the 34 Motion Pictures listed on Appendix A hereto anywhere throughout the world. This Order is effective from the date of the hearing of this matter, and shall continue to be effective until a final judgment is entered after the conclusion of all trial phases in this matter or until the Court otherwise Orders.

Dated: Nov. 20, 2001

Appendix C

s/ William Rea
The Honorable William Rea
United States District Court Judge for the
Central District of California

Submitted by:
DAVIS WRIGHT TREMAINE LLP
HENRY J. TASHMAN
JENNIFER L. BROCKETT

By: s/ Jennifer L. Brockett
Jennifer L. Brockett
Attorneys for Defendant,
Counterclaimant, Cross-Claimant and
Counterdefendant COLUMBIA
PICTURES INDUSTRIES, INC.

APPENDIX D — AMENDED ORDER GRANTING COLUMBIA'S MOTION FOR PRELIMINARY INJUNCTION OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA FILED JULY 31, 2001

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. 97-0615 WJR (CTx)

EDUARDO MORENO LAPARADE,

Plaintiff,

v.

COLUMBIA PICTURES INDUSTRIES, INC., a California corporation; MARIO MORENO IVANOVA, an individual, and as Executor of THE ESTATE OF MARIO MORENO REYES,

Defendants.

AND RELATED CROSS-CLAIMS, COUNTERCLAIMS AND THIRD PARTY CLAIMS

AMENDED ORDER GRANTINGCOLUMBIA'S MOTION FOR PRELIMINARY

The Motion For Preliminary Injunction, brought by Columbia Pictures Industries, Inc. ("Columbia's, came on regularly for hearing on July 20, 2001, at 9:30 a.m. Henry J.

Appendix D

Tashman of Davis Wright Tremaine LLP appeared on behalf of Columbia. Timothy Riley of Riley & Riley appeared on behalf of Mario Moreno Ivanova as an individual and on behalf of the Estate of Mario Moreno Reyes ("Ivanova"). After considering the moving and opposing papers, arguments of counsel and all other matters presented to the Court,

It is Hereby Ordered as follows:

The Tentative Ruling attached hereto as Exhibit "A" is the Order of this court. Columbia's Motion for Preliminary Injunction is granted as follows:

1. Ivanova is required to comply with its contractual obligations related to Columbia's rights of first refusal and/or option rights with respect to the following 8 motion pictures: (1) "Por Mis Pistolas;" (2) "Un Quijote Sin Mancha;" (3) "Conserje en Condominio;" (4) "El Barrendero;" (5) "El Ministro y Yo;" (6) "El Patrullero 777; (7) "El Profe;" and (8) "Don Quijote Cabalga de Nuevo" (the "8 Motion Pictures"). Such contractual obligations include providing Columbia notice of any bona fide offer from a third party to license the 8 Motion Pictures and providing Columbia 30 days to match that offer.

2. Ivanova's notice to Columbia of any third party offer must include all material terms of that offer, and Columbia's 30 days to match the third party offer shall not begin to run until those material terms are provided to Columbia in writing. Currently, Ivanova has represented to this Court that CineVideo International ("CineVideo") has made an offer

to Ivanova. Ivanova's counsel also represented that he would provide all material terms of that offer by responding to all questions set forth in Henry Tashman's letter dated June 29, 2001, attached as Exhibit MM to Columbia's Motion for Preliminary Injunction. Therefore, Columbia's 30 days to match the CineVideo offer shall begin on the day of Columbia's receipt of Mr. Riley's responsive letter. Mr. Riley represented to the Court that his responsive letter would be completed and delivered to Columbia on July 20, 2001.

3. If Ivanova enters any contract to license, distribute or exploit the 8 Motion Pictures in any media any where in the world with any person or company other than Columbia, Ivanova shall account to Columbia, Eduardo Moreno Laparade and the Estate of Natasha Gelman, for all monies derived from or under such contract. All monies received by or payable to Ivanova from or under such contract shall, without any deductions, be deposited – within 20 days of receipt – in a new fund to be established by Columbia with this Court (the "New Court Account").

4. If Columbia exercises its rights of first refusal or option to distribute the 8 Motion Pictures, then all monies to be paid by Columbia under any contract to license, distribute or exploit the 8 Motion Pictures – including payments to Ivanova, the Estate of Natasha Gelman or Eduardo Moreno Laparade – shall be paid instead into the New Court Account.

5. All money payable to Ivanova from or under any contract to license, distribute or exploit the 8 Motion Pictures (if any) shall remain in the New Court Account until further order of this Court.

6. The Clerk of the Court is hereby directed to set up the New Court Account (which shall be separate from the Interpleader Account established pursuant to this court's Order on April 11, 2004). The Clerk of the Court shall transfer all money deposited by any party pursuant to this Order to an interest bearing instrument with a maturity of six (6) months or less at an independent banking institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

7. Ivanova shall serve a copy of this Order on any party with which it enters into a license agreement in relation to the 8 Pictures and file the proof of service with this Court no later than 10 days after Ivanova enters such license agreement.

Dated: July 30, 2001

s/ William J. Rea
HONORABLE WILLIAM J. REA
UNITED STATES DISTRICT COURT JUDGE

Submitted by:

DAVIS WRIGHT TREMAINE LLP
HENRY J. TASHMAN
JENNIFER L. BROCKETT

By: s/ Henry J. Tashman
HENRY J. TASHMAN
Attorneys for Defendant,
Counterclaimant, Cross-Claimant and
Counterdefendant COLUMBIA
PICTURES INDUSTRIES, INC.

Appendix D

APPENDIX A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TENTATIVE RULING

Case Number: CV 97-0615 WJR (CTx)

Docket Number:

Title: *Laparade v. Columbia Pictures Industries, Inc.*

Date: July 20, 2001

Nature of Motion: Columbia's Motion for Preliminary Injunction

HON. WILLIAM J. REA, JUDGE

Marva Dillard, Deputy Clerk

TENTATIVE RULING

This Court is inclined to GRANT, in part, Columbia's Motion for a Preliminary Injunction. It appears that Columbia has demonstrated the existence of at least serious questions going to the merits and that the balance of hardships tips in its favor. This Court is also inclined to Order that Ivanova provide Columbia with the details of any potential offers to acquire the rights to license the eight films and, subsequently, provide Columbia with thirty days to match that offer. This

Court is not, however, inclined to restrain Ivanova's ability to exploit the films. Additionally, this Court is inclined to Order Ivanova to account for any proceeds and deposit the same in the accounts pending the resolution of the litigation.

DISCUSSION

I. Legal Standard

The standard for granting a preliminary injunction is well-settled: to obtain a preliminary injunction, a party must show either (1) a likelihood of success on the merits and the possibility of irreparable injury, or (2) the existence of serious questions going to the merits and the balance of hardships tipping in its favor. *See Miss World (UK) Ltd. v. Mrs. America Pageants, Inc.*, 856 F.2d 1445, 1448 (9th Cir. 1988). These are not two distinct tests, but rather the opposite ends of a single continuum in which the required showing of harm varies inversely with the required showing of meritoriousness. *See id.*

To obtain a preliminary injunction, the moving party must show probability (not mere possibility) of success at the ultimate trial on the merits. *See* 5 J. Thomas McCarthy, *Trademarks and Unfair Competition* § 30:45 (4th ed. 1997); *see also W.E. Bassett Co. v. Revlon, Inc.*, 354 F.2d 868, 871 (2d Cir. 1966). "Probability of success" implies that the moving party must have a very clear and strong case. *See id.*

The grant of a preliminary injunction is the exercise of a very far-reaching power never to be indulged except in a case clearly warranting it. *See Dymo Indus., Inc. v. Tapeprinter,*

Inc., 326 F.2d 141, 143 (9th Cir. 1964). A preliminary injunction is an extraordinary remedy; it is the exception, rather than the rule. *See United States v. Lambert*, 695 F.2d 536, 539 (11th Cir. 1983). A trial judge is not required to decide difficult legal and factual issues which could only be determined at a full trial. *See* 5 McCarthy, *supra*, § 30:45. The existence of any debate or doubts on the record as to the merits of the claim will ordinarily bar the granting of a preliminary injunction. *See Sid Berk, Inc. v. Uniroyal, Inc.*, 425 F.Supp. 22, 29 (C.D. Cal. 1977). Some courts have stated this in terms of the maxim that in considering preliminary injunctive relief "to doubt is to deny." *See* 5 McCarthy, *supra*, § 30:45. That is, if there is a doubt as to the plaintiff's ultimate success on the merits, the preliminary injunction should be denied. *See id.*

Further, a court must be mindful that the ultimate goal of a preliminary injunction is to preserve the status quo and relative positions of the parties pending a determination of the action on its merits. *See King v. Saddleback Junior College Dist.*, 425 F.2d 426, 427 (9th Cir. 1970); *Warner Bros. Pictures v. Gittone*, 113 F.2d 292, 293 (3d Cir. 1940). Simply put, a preliminary injunction should not fundamentally alter the pre-existing status of the parties. *See id.* Thus, the burden on a party seeking a preliminary injunction is especially heavy if the relief sought would in effect grant the plaintiff a substantial part of the relief it would obtain after a trial on the merits. *See GTE Corp. v. Williams*, 731 F.2d 676, 679 (10th Cir. 1984).

Appendix D

II. Analysis

In this Motion for a Preliminary Injunction, Columbia Pictures Industries, Inc. ("Columbia") seeks to enjoin Mario Moreno Ivanova ("Ivanova") from licensing the distribution rights to eight of the Cantinflas films. Specifically, Columbia claims that it currently possesses the distribution rights to seven of those films. Significantly, Columbia also contends that it owns the contractual right of first refusal to seven[1] of these films. Pursuant to this purported right of first refusal. Columbia asserts that it is entitled to have thirty (30) days to match any other offers to buy the distribution rights in the films. Columbia now believes that Ivanova has reached a deal in principal with CineVideo Internacional ("CineVideo") to distribute the films. Thus, Columbia argues that this Preliminary Injunction is necessary to protect the rights of first refusal. Columbia seeks either an injunction prohibiting Ivanova's licensing of the distribution rights or, alternatively, an order mandating Ivanova to comply with its contractual obligations.

But that is not all. Matters are further complicated by the fact that Columbia contends that the ownership of the films must initially be resolved by the Mexican Courts. That is, currently, Ivanova and Eduardo Moreno Laparade ("Laparade") are litigating the issue of who is the successor in interest to Cantinflas. Accordingly, Columbia contends that only the prevailing party in Mexico can trigger Columbia's right of first refusal.

1. In the interests of accuracy, this Court acknowledges that actually Columbia claims to possess the right of first refusal in six films and the option to acquire the right of first refusal in a seventh.

Appendix D

A. Underlying Basis for Preliminary Injunction

Ivanova, in its first salvo at defeating this Motion, argues that an injunction in this case is not proper because there is no claim at issue in this litigation as to the validity of Columbia's right of first refusal. Ivanova rightly argues that it is fundamental that there be a claim that would entitle the plaintiff to the injunctive relief requested. *See Stewart v. United States I.N.S.*, 762 F.2d 193, 198 (2d Cir. 1985).

But it appears that Ivanova's argument must fail. Here, it is clear that the validity of Columbia's contractual right of first refusal is at issue in this action. Specifically, Columbia asserts its claim to these rights within the Pre-Trial Conference Order. *See* Pre-Trial Conference Order, p. 18. Certainly, this Court will, in resolving this matter, adjudge the validity of Columbia's purported right of first refusal and the corresponding contracts. In fact, there can be little dispute that if this case is resolved entirely in Columbia's favor, then it will have valid rights of first refusal in six and possibly seven of the eight films. Accordingly, this Court is inclined to reject Ivanova's argument that the request for a preliminary injunction be denied as without foundation.

But this Court is inclined to agree with Ivanova in one respect: Ivanova's position vis-a-vis Laparade is not a matter before this Court. This is, Columbia's request that this Court prevent Ivanova from licensing the films until the issue of successorship is resolved could not properly be the basis for an injunction in this Court. Rather, the part of the case is being exclusively litigated in the Mexican courts. As such, this Court is not inclined to intrude upon the province of

that court to resolve the successorship issue. If either Columbia or any third parties (e.g., Laparade) are concerned with Ivanova's alleged attempt to stand in the shoes of Cantinflas' successor and thereby to purportedly usurp the position of the prevailing party in the Mexican litigation, then an injunction as to that conduct should be sought in Mexico rather than in this Court. As this Court has stated many times, successorship issues will be resolved in Mexico. Therefore, this Court will only consider Columbia's request for an injunction with respect to the contractual rights of first refusal at dispute in this Court.

B. ***Serious Questions as to the Merits***

The standard for granting a preliminary injunction is well-settled: to obtain a preliminary injunction, a party must show either (1) a likelihood of success on the merits and the possibility of irreparable injury, or (2) the existence of serious questions going to the merits and the balance of hardships tipping in its favor. *See Miss World (UK) Ltd. v. Mrs. America Pageants, Inc.*, 856 F.2d 1445, 1448 (9th Cir. 1988). As stated above, these are not two distinct tests, but rather the opposite ends of a single continuum in which the required showing of harm varies inversely with the required showing of meritoriousness. *See id.*

In this case, this Court is tentatively convinced that there are at least serious questions going to the merits with respect to the interpretation and validity of the contracts. This case has been litigated extensively and has survived various dispositive motions testing the strength of the parties' respective claims. Yet despite these frequent challenges, this

Court has allowed the case to proceed. Accordingly, it would be both illogical and inconsistent to now conclude that there are not at least serious questions going to the merits of this facet of the case.

For instance, there is some issue as to whether the contracts conveyed television distribution rights or merely theatrical distribution rights. Additionally, there is also an issue of whether Cantinflas validly executed these contracts. There appear to be serious questions as to these contracts and, accordingly, this Court is inclined to find that Columbia has met its burden as to the rights of first refusal.

But again, this Court is not inclined to express any opinion with respect to the Mexican litigation concerning the successorship issue. If Columbia, or more likely Laparade, has concerns regarding Ivanova's purported decision to assume the position of successor to Cantinflas, then that, as this Court has on many occasions stated, is a matter to be addressed with the Mexican courts.

C. *Balance of Hardships*

Measuring the hardship in this matter is a relatively (and, for this case, surprisingly) straightforward process. This Court must consider the burden on Ivanova to disclose, in detail, the terms of CineVideo's purported proposal to acquire the distribution rights and then allowing Columbia thirty (30) days to match it against the potential burden of increased uncertainty, potential diminution in value and additional litigation to Columbia. Additionally, this Court must factor in the hardship on Ivanova to account for and deposit any

proceeds in an escrow account pending the resolution of the litigation versus the hardship on Columbia to potentially pay repeatedly for the same rights.

It is rare that a proverb is more apt: an ounce of prevention is worth a pound of cure. While this Court certainly appreciates Ivanova's predicament as an individual whose primary source of income is entangled in a seemingly endless web of expensive litigation, it is nevertheless apparent that by respecting the purported right of first refusal puts Ivanova in a win-win situation. For instance, if Ivanova provides the details of the deal with CineVideo and gives Columbia thirty days to match, then it will either have secured an equally beneficial deal or will have obviated the need to litigate this matter. Whereas, proceeding without granting the right of first refusal will certainly add fuel and to an already raging fire of litigation and acrimony.

With respect to the catalog of potential hardships to Columbia if this injunction is not granted, the list is long and the potential harms significant. Columbia will forever lose the ability to take advantage of rights it believes it acquired for reasonable consideration. Additionally, it will be handcuffed in the ability to make important business decisions. Moreover, if Columbia prevails at trial, it will be extremely difficult to ascertain the value of the lost rights. Therefore, this Court is inclined to conclude that the balance of hardships tips in Columbia's favor.

Finally, it is important to consider the issue of the accounts designed to safeguard the proceeds from the Cantinflas films pending the resolution of the litigation. It is

clear that this account was created to allow the films to continue to be exploited while the litigation proceeded. The same must apply to Ivanova. Considering that the case, both here and in Mexico, is nearing resolution, it would appear to be ludicrous to allow Ivanova to exploit the films and keep all the proceeds for himself irrespective of the outcome of the litigation.

Accordingly, this Court is inclined to Order that if Ivanova does license the eight films to CineVideo, Columbia, or any other party, that the proceeds be accounted for and deposited in the account pending the resolution of this matter. This Court is certainly cognizant of the potential financial burden on Ivanova, but this is certainly necessary to prevent a potential end-run around the litigation.

Based on the foregoing, this Court is inclined to GRANT, in part, Columbia's Motion for a Preliminary Injunction. It appears that Columbia has demonstrated the existence of at least serious questions going to the merits and that the balance of hardships tips in its favor. This Court is also inclined to Order that Ivanova provide Columbia with the details of any potential offers to acquire the rights to license the eight films and, subsequently, provide Columbia with thirty days to match that offer. This Court is not, however, inclined to restrain Ivanova's ability to exploit the films. Additionally, this Court is inclined to Order Ivanova to account for any proceeds and deposit the same in the accounts pending the resolution of the litigation.

APPENDIX E — ORDER RE: MOTION FOR PARTIAL SUMMARY JUDGMENT AND MOTION TO ENJOIN PENDING MEXICAN LITIGATION OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA FILED MAY 10, 2000

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. 97-0615 WJR (CTx)
Honorable William J. Rea
Courtroom 10

EDUARDO MORENO LAPARADE,

Plaintiff,

vs.

COLUMBIA PICTURES INDUSTRIES, INC., a California corporation; MARIO MORENO IVANOVA, an individual, and as Executor of THE ESTATE OF MARIO MORENO REYES,

Defendants.

AND RELATED COUNTERCLAIMS

ORDER RE: MOTION FOR PARTIAL SUMMARY JUDGMENT AND MOTION TO ENJOIN PENDING MEXICAN LITIGATION

On May 8, 2000, at 10:00 a.m. in Courtroom 10 of the Federal Court of the Central District of California, the

Honorable William J. Rea, Judge presiding, the Motion for Partial Summary Judgment and the Motion to Enjoin Pending Mexican Litigation came on for hearing before this Court. Henry J. Tashman and Rochelle Wilcox appeared on behalf of Columbia Pictures Industries, Inc. ("Columbia"), Timothy J. Riley appeared on behalf of Mario Moreno Ivanova, Virgil W. Mungy (and Geoffrey C. Brown appeared on behalf of Eduardo Moreno Laparade. Peter Smoot appeared on behalf of Natasha Gelman,[1] Gerald Panter appeared on behalf of Joyce Jett, and Christopher Larkin appeared on behalf of Authors' Rights Restoration Corporation ("ARRC")

I. Motion for Partial Summary Judgment

A. *Standard of Review*

Pursuant to Federal Rule of Civil Procedure 56, a court should award summary judgment where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The principal inquiry is whether a genuine issue of material fact exists. *See* 10A Charles Alan Wright, et al., *Federal Practice and Procedure* § 2725 (3d ed. 1998).

A fact is material if, under the substantive law governing the case, it "might affect the outcome of the suit." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). There is a

1. Janet Neschis, as Preliminary Executor of the Estate of Natasha Gelman, now represents Natasha Gelman in this action.

"genuine" issue over a material fact "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* The court need not, however, consider factual disputes that are irrelevant or unnecessary under the relevant substantive law. *See id.*

The moving party carries the burden of establishing that there is no genuine issue of material fact. *See Mutual Fund Investors v. Putnam Management Co.*, 553 F.2d 620, 624 (9th Cir. 1977). To survive the summary judgment motion, the responding party need only present evidence from which a jury might return a verdict in its favor. *See Anderson*, 477 U.S. at 255.

Finally, the Court notes that "at the summary judgment stage the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Id.* at 249. Thus, "[t]he evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." *Id.* at 255 (citing *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 158-159 (1970)).

B. ***Analysis***

Laparade filed a First Amended Complaint in this action on April 22, 1997 seeking a declaratory judgment that he is the sole owner of all right, title and interest in the Cantinflas films and that he is entitled to certain past and future Motion Picture Participations pursuant to the Stipulated Judgment. In response, Columbia filed an Interpleader Counterclaim and Cross-Claim on April 28, 1997 requesting that the Court

order Ivanova, Laparade, Gelman, Jett, and ARRC to interplead and litigate with Columbia, and with each other, their claims to certain past and future Motion Picture Participations and certain rights, under copyright or otherwise, to distribute or otherwise exploit the Cantinflas films.

The Court subsequently dismissed Laparade's First Amended Complaint. The Court held that the dispute as to whether Laparade or Ivanova is the successor to Cantinflas's interest in the Cantinflas films should be litigated in Mexico, as the parties agreed to the Stipulated Judgment, but that the remaining cross-claims and counterclaims regarding copyright ownership of the Cantinflas films and ownership of related rights should go forward. *See* July 12, 1999 Ord. Lifting Stay, at 2.

Accordingly, the issue of whether Ivanova or Laparade is the successor to Cantinflas' interest in the Cantinflas films must be litigated in Mexico. The issue of what rights Cantinflas' successor-in-interest retains in the Cantinflas films in relation to Columbia and ARRC, however, remains before this Court. Columbia now moves the Court for summary judgment against Ivanova, Laparade, Gelman, and Jett on the grounds of res judicata, equitable estoppel, waiver, and ratification. The Court finds, however, that summary judgment is not warranted.

1. *Admissibility of Evidence*

As a preliminary matter, the Court notes that issues may exist as to the admissibility of evidence submitted by the

parties to this action. Even if the Court considers the evidence, however, the Court finds that summary judgment is not warranted. Thus, the Court need not reach this issue. To the extent that the parties wish to object to evidence to be used at trial, the parties may make their objections by filing motions in limine before trial.

2. *Res Judicata*

The doctrine of res judicata includes both claim preclusion and issue preclusion. *See Robi v. Five Platters, Inc.*, 838 F.2d 318, 321 (1988). Claim preclusion treats a judgment, once rendered, as the full measure of relief to be accorded between the same parties on the same "claim" or "cause of action." *See id.* at 322. Claim preclusion prevents litigation of all grounds for, or defenses to, recovery that were previously available to the parties, regardless of whether they were asserted or determined in the prior proceeding. *See id.* The requirements of claim preclusion are (1) a final judgment on the merits (2) between the same parties or their privies (3) over the same cause of action. *See Davis & Cox v. Summa Corp.*, 751 F.2d 1507, 1518 (9th Cir. 1985).

Here, the parties dispute whether this action involves the same cause of action as the First Interpleader Action. The most important factor in determining whether successive suits involve the same cause of action is whether the two suits arise out of the same transactional nucleus of facts. *See Constantini v. Trans World Airlines*, 681 F.2d 1199, 1202 (9th Cir. 1982); *International Union of Operating Engin'rs-Employers Constr. Indus. Indus. Pension, Welfare and Training Trust Funds v. Karr*, 994 F.2d 1426, 1430 (9th Cir.

1993). What is at issue is whether the judgment in the previous action precludes the legal harm that the second action seeks to redress. *See McClain v. Apodaca*, 793 F.2d 1031, 1034 (9th Cir. 1986).

Here, the Court finds that this suit does not involve the same cause of action as the First Interpleader Action. The First Interpleader Action merely resolved the issue of which parties were entitled to proceeds from the distribution of the Cantinflas films, whereas this action seeks to adjudicate the parties' ownership claims to the Cantinflas films. Although Columbia argues that the two suits involve the same transactional nucleus of operative facts because the same alleged film contracts are at issue in both actions, any ownership claims asserted by the other parties arise from different sources, not out of the alleged film contracts.

Further, although Columbia states that it merely seeks a judgment affirming the alleged film contracts that were the basis for the Stipulated Judgment and preventing Defendants from challenging the rights granted by those contracts, Columbia also argues that any ownership claims asserted by the other parties threaten Columbia's rights in the Cantinflas films. Moreover, even if Columbia merely seeks a judgment affirming the alleged film contracts, the Court finds that material issues of genuine fact exist as to whether the contracts produced by Columbia are in fact the contracts that were the basis for the Stipulated Judgment.

Thus, the Court finds that the two suits involve different causes of action. Further, the Court finds that even if Columbia merely seeks a judgment affirming the alleged film

contracts that were the basis for the Stipulated Judgment, genuine issues of material fact exist as to whether the contracts produced by Columbia are in fact the contracts that were the basis for the Stipulated Judgment. Accordingly, the Court denies the Motion for Partial Summary Judgment on the grounds of res judicata.

3. *Equitable Estoppel*

The doctrine of equitable estoppel prevents a party, by his action or inaction, from causing another to act to his detriment. The Ninth Circuit has developed four necessary factors to apply the doctrine of equitable estoppel: (1) the party to be estopped must know the facts; (2) he must intend that his conduct shall be acted on or must so act that the party asserting the estoppel has a right to believe it is so intended; (3) the latter must be ignorant of the true facts; and (4) he must rely on the former's conduct to his injury. *See Bequette v. National Ins. Underwriters, Inc.*, 429 F.2d 896, 900 (9th Cir. 1970).

Here, the Court finds that Columbia does not demonstrate that it acted to its detriment. After the First Interpleader Action ended with the entry of the Stipulated Judgment, Columbia continued to distribute the Cantinflas films and derived income from its distribution of the films. Columbia's only allegation of detriment is that "Ivanova is claiming that the judgments he obtained in Mexico adjudicate Columbia's rights." Such allegations, however, do not rise to the level of detriment for the purposes of equitable estoppel.

Thus, the Court finds that Columbia does not demonstrate that it is acted to its detriment. Accordingly, the Court denies the Motion for Partial Summary Judgment on the grounds of equitable estoppel.

4. *Waiver*

Waiver is the intentional relinquishment of a known right with knowledge of its existence and the intent to relinquish it. *See CBS, Inc. v. Merrick*, 716 F.2d 1292, 1295 (9th Cir. 1983). Here, the First Interpleader Action merely resolved the issue of which parties were entitled to proceeds from the distribution of the Cantinflas films, whereas this action seeks to adjudicate the parties' ownership claims to the Cantinflas films. There is no indication that by signing the Stipulated Judgment, the parties intended to relinquish all claims to the Cantinflas films. Rather, the Court finds that the parties merely agreed to the allocation of proceeds from the distribution of the Cantinflas films.

Thus, the Court finds that the parties did not waive their claims by signing the Stipulated Judgment. Accordingly, the Court denies the Motion for Partial Summary Judgment on the grounds of waiver.

5. *Ratification*

Columbia argues that the doctrine of ratification precludes the other parties from asserting their claims in this action. Columbia cites *Lockwood v. Wolf Corp.*, 629 F.2d 603, 609 (9th Cir. 1980) for the proposition that a party is precluded from challenging a contract if the party accepts

the benefits of the contract or causes prejudicial reliance by his silence. That case, however, is inapposite. *Lockwood* deals with whether, under the law of the state of Washington, a corporation through its actions may ratify a settlement agreement negotiated by a corporate agent who lacks actual authority to bind the corporation. *See id.* at 609.

Thus, the Court finds that Columbia fails to demonstrate that the doctrine of ratification precludes the other parties from asserting their claims in this action. Accordingly, the Court denies the Motion for Partial Summary Judgment on the grounds of ratification.

II. Motion to Enjoin Pending Mexican Litigation

A. *Standard of Review*

As a general principle, one court should not interfere with or try to restrain proceedings in another court in an ordinary action in personam. *See Compagnie Des Bauxites De Guinea v. INS Co. of N. Am.*, 651 F.2d 877, 887 (3d Cir. 1981) (citing *Donovan v. City of Dallas*, 377 U.S. 408, 412 (1964)). Where judgment is sought in personam, two courts with concurrent jurisdiction may proceed with litigation at least until judgment is obtained in one case which may be used as res judicata in the other. *See id.* (citing *Princess Lida v. Thompson*, 305 U.S. 456, 466 (1939)). This principle applies even where one action is foreign. *See id.*

While a district court with jurisdiction over the parties has discretion to enjoin them from proceeding with an action in the courts of a foreign country, that power should be used

sparingly. *See Seattle Totems v. National Hockey League*, 652 F.2d 852, 855 (9th Cir. 1981). The issue is not one of jurisdiction, but of comity. *See id.* Comity dictates that foreign antisuit injunctions be issued sparingly and only in the rarest cases. *See Gau Shan Co., Ltd. v. Bankers Trust Co.*, 956 F.2d 1349, 1354 (6th Cir. 1992). The Ninth Circuit has held that in determining whether to issue a foreign antisuit injunction, courts should consider whether the foreign litigation would: (1) frustrate a policy of the forum issuing the injunction, (2) be vexatious or oppressive, (3) threaten the issuing court's in rem or quasi in rem jurisdiction, or (4) whether the proceedings prejudice other equitable considerations. *See Seattle Totems*, 652 F.2d at 855.

B. ***Analysis***

Here, Columbia moves the Court to enjoin Ivanova and Laparade from proceeding with actions pending in Mexico. The Court finds that equitable considerations warrant the issuance of an injunction.

Columbia filed its Interpleader Counterclaim and Cross-Claim in 1997, requesting that the Court adjudicate the parties' claims to certain past and future Motion Pictures Participations and certain rights, under copyright or otherwise, to distribute or otherwise exploit the Cantinflas films. The Court held that because the ownership claims threatened the validity of the Stipulated Judgment entered by the Court in the First Interpleader Action, the Court had jurisdiction over the ownership claims by virtue of the Court's express reservation of jurisdiction to enforce the Stipulated Judgment.

Ivanova and Laparade, however, seek to adjudicate their ownership claims in actions pending in Mexico. Ivanova and Laparade both name Columbia as a party to the actions pending in Mexico. Neither Jett nor Gelman are named as parties to the Mexican proceedings. If the Mexican proceedings result in a judgment naming either Ivanova or Laparade as the sole owner of all rights in the Cantinflas films, it could invalidate the Stipulated Judgment, thereby undermining the Court's jurisdiction over this action and extinguishing the interests of Jett and Gelman that were established by the Stipulated Judgment.

Thus, the Court finds that equitable considerations warrant the issuance of an injunction. Accordingly, the Court grants the Motion to Enjoin Pending Mexican Litigation and enjoins Ivanova and Laparade from litigating their ownership issues in Mexico. Ivanova and Laparade may continue to litigate in Mexico the dispute as to whether Ivanova or Laparade is the successor to Cantinflas's interest in the Cantinflas films, as the parties agreed in the Stipulated Judgment. The remaining cross-claims and counterclaims regarding copyright ownership of the Cantinflas films and ownership of related rights, however, will go forward in this Court.

III. Other Matters

Ivanova and Laparade both request that the Court continue the hearing on Columbia's Motion for Partial Summary Judgment. The Court already considered and decided Ivanova and Laparade's Ex Parte Applications to continue the hearing. The Court's decision is final. In

addition, the Court already instructed the parties that, absent extraordinary circumstances, the Court would not consider any requests for a continuance unless made by noticed motion or stipulation. *See* April 28, 2000 Ord. Re: Procedure Requesting Continuance Hr'g. Thus, the Court denies the request for a continuance.

Ivanova and Laparade also request that the Court stay these proceedings. The Court already indicated, however, that the Court "will not entertain any further requests to stay these proceedings." *See* April 11, 2000 Ord. Re: Mot. Dismiss, at 2. Thus, the Court denies the request for a stay.

Finally, the Court's patience is wearing thin with the obstructive behavior and delaying tactics undertaken by attorneys in this action. The Court has ruled numerous times that this action should go forward and be litigated before this Court. Further, the Court is disturbed by the lack of civility the attorneys have demonstrated in their dealings with each other before this Court and the blatant disrespect the attorneys have demonstrated for the Federal Rules, Local Rules, and the Court's orders in this action. Thus, the Court warns the attorneys that any future attempts to delay or obstruct these proceedings, lack of civility in dealings before the Court, violations of the Federal or Local Rules, or violations of the Court's orders will result in sanctions against the responsible attorney.

Appendix E

IT IS SO ORDERED.

Dated: May 9, 2000

s/ William J. Rea
William J. Rea
United States District Judge.

APPENDIX F— TENTATIVE RULING OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA DATED JULY 14, 1997

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TENTATIVE RULING

Case Number: CV 97-0615 WJR (CTx)

Docket Number: 15

Title: ***Eduardo Moreno Laparade v. Columbia Pictures, et al.***

Date: July 14, 1997

Nature of Notion: Defendant Mario *Moreno Ivanova's Motion to* Dismiss' First Amended Complaint; Defendant Ivanova's Motion to Dismiss Columbia's Amended Cross-Claim; Defendant Ivanova's Motion, to Dismiss Cross-Claim of Authors Rights Restoration Corporation.

HON. WILLIAM J. REA, JUDGE

Marva Dillard, Deputy Clerk.

TENTATIVE RULING

The Court is inclined to GRANT defendant Ivanova's motion to dismiss plaintiff's first amended complaint with

prejudice. Regardless of the ultimate effect of the Mexican courts' judgment upon the respective rights of the parties under this Court's 1994 Stipulated Judgment, the initial question as to whether or not Laparade has a valid legal interest in certain motion pictures through contractual transfer has been decided as a final matter by the Mexican courts. Relitigation of that issue in this Court would be entirely inappropriate, and this court has no jurisdiction to allow such relitigation.

The Court is inclined to DENY defendant Ivanova's motion to dismiss the amended cross-claim of defendant Columbia.

The court is inclined to DENY defendant Ivanova's motion to dismiss the cross-claim of the Authors Rights Restoration Corporation.

DISCUSSION

I. Ivanova's Motion to Dismiss Laparade's Complaint.

A. Significance of 1994 Stipulated Judgment.

1. Relevance of 1994 Judgment to Question of Proceeds Distribution.

The 1994 Stipulated Judgment provided that all monies owed to either Moreno Ivanova or to Moreno Laparade were to be paid into an escrow account, and that all proceeds of the account would be paid in the appropriate amounts to the appropriate parties "following the presentation to the escrow

agent of a final judgment in the Mexican proceedings or the joint written instructions to the escrow agent of Moreno Ivanova, Moreno Laparade and the Estate." Stip. Judgm. at ¶¶ 7, 8(d). The escrow agreement further made clear that the monies were being held in escrow "*pending resolution of certain disputes* between the Moreno Ivanova and Moreno Laparade *in the courts of Mexico*." Escrow Agreement, Exhibit A to Motion at 34 (emphases added).

The Stipulated Judgment further provided for retention of jurisdiction by the court "for the *exclusive purpose of the enforcement of that stipulation and this Judgment*." Stip. Judgm. at ¶ 15 (emphasis added).

The Stipulated Judgment clearly contemplated that Laparade's contractual claim for rights to proceeds from certain Moreno Reyes films would be determined in the Mexican courts, and that whether and to what extent Laparade's claim was deemed valid would determine the distribution of proceeds in the Laparade/Ivanova escrow account. The Judgment reserved jurisdiction by this Court only to determine whether or not such prerequisites - i.e., final and nonappealable judgment by a Mexican court - had been fulfilled, and to direct and/or approve the subsequent distribution of funds. The judgment clearly did not reserve jurisdiction for this Court to reexamine the substantive contractual question being litigated in the Mexican courts.

2. Proceeds Dispute vs. Ownership Dispute.

Despite the fact that Columbia is a party to Laparade's underlying complaint only as a defendant, Columbia nonetheless has submitted an opposition to Ivanova's motion

to dismiss Laparade's complaint. It does not appear that Columbia's interest in the matter is antagonistic to Ivanova's interest *to the limited extent* that Ivanova asserts that the Mexican judgment precludes Laparade from asserting a right to the escrow account funds. Indeed, Columbia indicates that its concern essentially exists independent of this Courts determination as to dismissal of Laparade's underlying complaint - so long as this Court does not preclude related litigation which could ultimately lead to an order indicating that claims as to *ownership* of certain films are precluded as inconsistent with the 1994 Stipulated Judgment, and so long as this court dues not dismiss Laparade's underlying complaint on the basis that film *ownership* has been resolved in Ivanova's favor. *See* Columbia Opposition at 7.

Specifically, Columbia evinces concern as to an apparent shift in focus by Laparade and Ivanova from the previous interpleader action. That is, an apparent shift from litigating the issue of *proceeds* to litigating the issue of *ownership*. Columbia expresses concern that this Court might, in dismissing Laparade's action, indicate that the Mexican Courts determined that Ivanova owns the films in question. Columbia further expresses concern that this court might, in dismissing the underlying action and/or relevant cross-claims, preclude Columbia from seeking orders to the effect that claims to *ownership* are barred by the earlier stipulated judgment.

While the court is inclined to dismiss Laparade's underlying complaint, it is inclined to do so on a basis not inconsistent with Columbia's asserted interests at the present time. As far as the Court is concerned, substantive questions

as to ownership, or even as to whether or not the issue or ownership could appropriately be litigated, are simply not before the Court at this time. What is important for purposes of the instant motion to dismiss is that; regardless of whether or not the Mexican proceedings implicated rights to ownership or merely to proceeds, and regardless of whether or not it would be appropriate to recognize and effectuate any Mexican judgment as to ownership as opposed merely to proceeds in this court, the underlying issue upon which Laparade has consistently asserted *any* rights in connection with the subject films - that is, an alleged contractual transfer - has been decided as a final matter in the Mexican courts. Hence, regardless of the ultimate effect of the Mexican proceedings upon the stipulated judgment, and regardless of what elements of those proceedings may or may not appropriately be considered by this Court at a later date, what is clear is that Laparade is precluded, as outlined below, from relitigating the substantive contractual issue litigated and determined in Mexico. This the Court can decide *regardless* of whether the ultimate relief which Laparade now asserts concerns ownership or proceeds. Furthermore, to the extent that Columbia's concerns involve claims of ownership made by parties other than Laparade, including Ivanova, these concerns are more directly addressed below with regard to Ivanova's motions to dismiss certain cross-claims.

B. Significance of Mexican Proceedings.

It is important to keep in mind what is and what is not before the Court at the present time. At present, the Court must determine only whether it has jurisdiction over the substantive issue of whether or not Laparade is contractually

entitled to any rights arising from the subject films pursuant to an alleged agreement between Laparade and Moreno Reyes. While defendant Ivanova suggests that the judgment of the Mexican courts is dispositive both as to this court's lack of jurisdiction, and as to the fact that substantively, Ivanova is entitled to certain rights and proceeds, we simply need not decide the latter question at this juncture. Indeed, the relevant point for purposes of the instant motion, is that regardless of the ultimate effect of the Mexican judgment upon the amount or the rights to which Ivanova is entitled as heir of Moreno Reyes' estate, (regardless of whether, for example, the disputed films are actually part of Moreno Reyes' estate), the Mexican courts *did* determine the underlying issue as to whether or not *Laparade* proffered a successful contractual claim. While this Court may have jurisdiction to determine the effect of that judgment upon the allocation of proceeds (and possibly to determine whether or not any parties have a right to assert claims to film ownership), this Court certainly did not retain, and does not otherwise have, jurisdiction to relitigate that underlying contractual question.

As to the Mexican judgment itself, defendant Ivanova asks, us to take judicial notice of several translated documents from the Mexican courts.[1] These documents make clear that

1. Despite plaintiff's objections to the legitimacy of these translated documents, we find it sufficient for purposes of this motion that defendant has provided the signature and seal of court certified translators attesting to the "true and faithful nature" of the translations, *see* Request for Judicial Notice at ex. 2, p.13; ex. 3, p.1, and that the defendant's attorney has, under implied threat of

(Cont'd)

(1) the collegiate Court, the Supreme Court of Justice of Mexico, vacated the earlier rulings of the trial and intermediate appellate courts in Laparade's favor, and ordered that the lower courts relieve Ivanova of any obligations imposed by those rulings, *see* Request for Judicial Notice at ex. 1, p. 14; (2) the Mexican trial court, upon receiving this directive, issued a new ruling acknowledging the Supreme Courts holding that Laparade's claim should not be vindicated, and releasing Ivanova from any obligations to Laparade pursuant to Laparade's claim, *see* Request for Judicial Notice at ex. 2, p. 23; (3) the ruling of the Collegiate

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(Cont'd)

Rule 11 sanctions, provided a signed statement to the effect that "all of the documents represent official acts of Mexican judicial or legislative authorities. . . ." Request for Judicial Notice at 2. Furthermore, plaintiff nowhere disputes the accuracy of the documents provided, despite the fact that plaintiff would obviously have had access to the original language versions of the translated documents.

As to plaintiff's specific objection under 28 U.S.C. § 1746(1), that statute does not indicate that the precise wording suggested is the exclusive wording which is acceptable for statements of authentication. As to plaintiff's objection under Fed. R. Ev. 901(a) and 902(3), the sworn statements as to the authenticity of the translations would appear to meet the requirements both of Rule 901(a) and 902(3)(A). Furthermore, Rule 902(3) specifically provides that "[i]f reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good shown, order that they be treated as presumptively authentic. . . ." Here, plaintiff clearly has had access to the documents in question, both in their original and translated forms. Hence, the purpose behind the rules here invoked simply is not existent in this case.

court was a final and unappealable *amparo* proceeding. *See* Request for Judicial Notice at ex. 3, p. 33.

Indeed, plaintiff does not substantively dispute any of this history. Plaintiff attempts only to *recharacterize* what occurred, urging us to find that, because judgment was not specifically rendered in Ivanova's favor, no "final judgment" was entered for purposes of resolving the terms of this Court's Stipulated Judgment, and this Court must therefore take jurisdiction to resolve the matter. *See* opposition at 2.

Plaintiff's argument is fundamentally misguided. The Mexican courts clearly reached a final and nonappealable decision to the effect that Laparade's claim to rights connected to certain films on account of an alleged contractual transfer should not be vindicated. That is all this Court need recognize at the present time. What effect, if any, this judgment has upon Ivanova's rights under the Stipulated Judgment will likely be determined at a later date. What *is* clear is that Laparade's rights have been fully and finally adjudicated in the Mexican courts. Hence, whatever the effect of the Mexican Judgment upon Ivanova's rights, and to whomever any rights *not* accorded Laparade may or may not belong – it is clear that the basis upon which Laparade seeks proceeds (or ownership) under the Stipulated Judgment *has* been adjudicated against Laparade. Thus, while it may or may not be left to a later date to determine who will receive the rights to which Laparade is not entitled, and what rights those may be – it is clear that Laparade himself has no further place in this action, pursuant to a final judgment of the Mexican courts.

C. Res Judicata Principles Bar Relitigation of the Issue Determined by the Mexican Courts.

"In order to bar a suit under the doctrine of res judicata, an adjudication must (1) involve the same 'claim' as the later suit, (2) have reached a final judgment on the merits, and (3) involve the same parties or their privies." *Nordhorn v. Ladish Co., Inc.*, 9 F.3d 1402, 1404 (9th Cir. 1993), *citing Blonder-Tongue Laboratories v. University of Illinois Foundation*, 402 U.S. 313, 323-24 (1971). The doctrine of res judicata can serve to bar the filing of suit in an American court where a final judgment was reached in a court of foreign jurisdiction. *See, e.g., Laker Airways v. Sabena, Belgian World Airlines*, 731 F.2d 909, 927 (D.C. Cir. 1984).

As noted above, the Mexican courts reached a final and nonappealable judgment on precisely the issue which plaintiff seeks to litigate again in this Court – that is, whether or not plaintiff has rights relating to films in question as the result of a contractual transfer. Indeed, even to the extent that Laparade requests relief different from that referred to in the earlier Stipulated Judgment, (i.e., ownership vs. proceeds), Laparade's complaint makes clear that the factual and legal basis underlying the instant claim is the same as that litigated in the Mexican proceedings – the very proceedings referred to in the Stipulated Judgment. *See* Complaint at ¶ 10. Laparade argues only that the Mexican judgment was not "final," and that the issue thus should be relitigated. *Id.* As indicated above, the Court disagrees with Laparade's characterization of the Mexican proceedings. Hence, plaintiff is now barred from relitigating the question of whether he is entitled, through contractual transfer, to *any* rights, or proceeds in the subject films.

D. This Court Does Not Have Jurisdiction Over Plaintiff's Complaint.

As noted above, the Stipulated Judgment provided for retention by this Court of jurisdiction "for the *exclusive purpose of the enforcement of that Stipulation and this Judgment.*" Stip. Judgm. at ¶ 15 (emphasis added). This may well entail, as discussed above, determination of the significance of the Mexican courts' determination with regard to who shall receive rights to which Laparade was deemed not entitled. It does not, however, entail a revisiting of the underlying substantive issue which was specifically reserved for the Mexican courts, *see* Stip. Judgm. at ¶¶ 7, 8(d), and which, regardless of any ambiguity or lack thereof as to its ultimate ramifications, was determined by the Mexican courts. Hence, the Stipulated Judgment cannot be relied upon as a basis for jurisdiction.

Given that the Stipulated Judgment cannot be relied upon as a jurisdictional basis, it is clear that no legitimate basis for jurisdiction exists. Even when Laparade's argument as to "proper alignment of parties" is considered, it is clear that Laparade remains a plaintiff and Ivanova remains a defendant in the action filed by Laparade. As defendant points out, this destroys complete diversity, as there are Mexican defendants on both sides of the case. *See* 28 U.S.C. § 1332(a)(2); *Faysovad Ltd. v. United Coconut Chem., Inc.*, 878 F.2d 290, 294 (9th Cir. 1989); *Cheng v. Boeing Co.*, 708 F.2d 1406, 1412 (9th Cir. 1983).

The only other jurisdictional basis alleged in plaintiff's complaint is under the Declaratory Judgment Act. Despite

plaintiff's arguments to the effect that this Act "bolsters" the argument for jurisdiction, *see* Opposition at 8-9, the fact remains that the Declaratory Judgment Act does not provide an independent source of subject matter jurisdiction. *See Staacke v. U.S. Secretary of Labor*, 841 F.2d 278, 280 (9th Cir. 1988), *citing Fidelity & Casualty Co. v. Reserve Insurance Co.*, 596 F.2d 914, 916 (9th Cir. 1979).

Finally, plaintiff argues in his opposition, although he did not allege as much in his complaint, that supplemental and ancillary jurisdiction exist in the instant action. To begin with, plaintiff is incorrect in analyzing the two concepts as though they are distinct from one another. 28 U.S.C. § 1367 "codifies under the name of 'supplemental jurisdiction' the caselaw doctrines of 'pendent' and 'ancillary' jurisdiction . . . ." *See* 28 U.S.C. § 1367 (West 1993) (practice commentary). Hence, supplemental jurisdiction is the only appropriate basis for argument, as § 1367 codifies both ancillary and pendant jurisdiction under the umbrella of supplemental jurisdiction. More importantly, as substantive matter, supplemental jurisdiction would not exist over Laparade's complaint even if the complaint were not already barred by the doctrine of res judicata. Given, as discussed above, that relitigation of Laparade's substantive contractual claim is not necessary to "vindicate [the Court's] authority," *see Kokkonen v. Guardian Life Insurance Co.*, 128 L. Ed. 2d 391, 397 (1994), but would in fact run counter to that end, and given that Laparade seeks to attach itself to the supplemental jurisdiction of an earlier case which did not leave open the underlying question now sought to be adjudicated, supplemental jurisdiction would be entirely inappropriate. *Id.* (finding an asserted factual relationship to

an earlier case insufficient to establish supplemental jurisdiction).

E. Dismissal as to Laparade's Claim Should Be With Prejudice, as Plaintiff's Sole Basis for Suit Was Already Adjudicated by the Mexican Courts.

As detailed above, Laparade's sole basis for existence in this litigation, as made clear by the 1994 Stipulated Judgment, was based upon contractual rights asserted by Laparade, and since litigated in the Mexican courts. Given our inclination to dismiss Laparade's claim on the basis of the res judicata effect of the Mexican decision, in addition to our lack of independent subject matter jurisdiction, dismissal of Laparade's complaint should be with prejudice.

II. Ivanova's Motions to Dismiss Cross-Claims.

A. Case by Case Determination as to the Propriety of Individual Cross-Claims is Appropriate in Light of the Court's Inclination to Dismiss the Underlying Complaint.

As an initial matter, it should be noted that dismissal of the cross-claims and counterclaims in the instant case is not a foregone conclusion simply on the basis of the Court's inclination to dismiss Laparade's underlying complaint. "Dismissal of the original suit ... for lack of subject matter jurisdiction will require the court also to dismiss the cross-claim, *unless* that claim is supported by an independent basis for federal jurisdiction." *See* Wright & Miller, Federal Practice and Procedure, Vol. 6, § 1433, p. 258 (1990). Given

that Ivanova brings the instant motions to dismiss two cross-claims concurrently with his motion to dismiss the underlying complaint, we are now free to make an independent determination as to whether or not each of the two cross-claims at issue should remain within the Court's jurisdiction, despite the dismissal of the underlying complaint.

B. Motion to Dismiss Columbia's Cross-Claims.

The Court is inclined to find that, independent of the underlying Laparade complaint, the Court has jurisdiction over Columbia's Cross-Claims and Counterclaims, and thus is inclined to permit those Cross-Claims and Counterclaims to proceed.

Specifically, the Court finds that the claims asserted by Columbia fall within the realm of determinations which this Court specifically maintained jurisdiction to make, pursuant to its reservation of jurisdiction "for the exclusive purpose of the enforcement of that Stipulation and this Judgment." Stip. Judgm. at ¶ 15. It indeed appears that the Stipulated Judgment was at least arguably premised upon the notion that Columbia owned the rights to the subject films, with the sole question for this Court's determination how much and to whom past, present and future royalties were owed by Columbia. At the very least, Columbia appears to be correct in asserting that, if newly raised claims to complete film ownership were to be vindicated, it could invalidate this Court's allocation of future royalties by Columbia in its Stipulated Judgment.

Furthermore, as noted above with regard to Ivanova's motion to dismiss Laparade's underlying complaint, it is not at all clear that the Stipulated Judgment reserved the issue of whether or not Ivanova *owned* the subject films for determination by the Courts of Mexico, nor are the ultimate ramifications of the Mexican judgment clear with respect to ownership – and certainly not with respect to its ultimate effect upon the Stipulated Judgment. Hence, if Ivanova is now claiming ownership of the films pursuant to the Mexican judgment, and if any other parties are now claiming ownership of the films, it is clear that this Court has jurisdiction pursuant to the Stipulated Judgment to determine, at the very least, whether litigation as to such ownership claims is even appropriate at this juncture, or is barred by the Stipulated Judgment. Hence, the Court is inclined to maintain jurisdiction over Columbia's cross-claim, despite its inclination to dismiss Laparade's underlying complaint.

C. Motion to Dismiss ARRC's Cross-Claims.

The Authors Rights and Restoration Corporation ["ARRC"] also brings, in its answer to Ivanova's cross-claim, its own counterclaims and cross-claims. Ivanova seeks to dismiss the cross-claims raised against him by ARRC. For reasons similar to those enumerated above with respect to Columbia's interpleader counterclaim/cross-claim, we are inclined to maintain jurisdiction over ARRC's cross-claims against Ivanova.

First of all, as ARRC brings its cross-claim for determination of copyright ownership under the United States Copyright Act, an independent basis for federal jurisdiction exists.

Second, and perhaps most importantly, the Court is inclined to find that determination of ARRC's claim falls within the realm of issues contemplated by the Court's reservation of jurisdiction over matters related to the "enforcement of [the Stipulated] Judgment." Stip. Judgm. at ¶ 15. At the very least, as noted above, the question of whether or not the parties now asserting ownership interests have a right to assert these interests under the Stipulated Judgment, does indeed fall within the realm of issues related to enforcement of that judgment. Given the effect that conflicting ownership claims could obviously have upon the Stipulated Judgment's determination with respect to Columbia's obligation to distribute proceeds, it is important that such claims be resolved in this Court. Hence, Ivanova's *forum non conveniens* claim is unavailing, as is his assertion that jurisdiction does not exist pursuant to the Stipulated Judgment.

APPENDIX G — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT DENYING PETITION FOR REHEARING FILED JANUARY 11, 2005

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 02-56222

D.C. No. CV-97-00615-WJR

EDUARDO MORENO LAPARADE,

Plaintiff-counter-defendant,

v.

MARIO MORENO IVANOVA, and individual & as Executor of the Estate of Mario Moreno Reyes;

Defendant-cross-defendant-Appellant,

COLUMBIA PICTURES INDUSTRIES, INC., a California corporation,

Defendant-counter-claimant-cross-claimant-Appellee.

Appendix G

No. 03-56207

D.C. No. CV-03-01033-DT

MARIO MORENO IVANOVA; ESTATE OF MARIO MORENO REYES (A/K/A CANTINFLAS);

Plaintiffs-Appellants,

TIMOTHY CHARLES RILEY, Esq.,

Appellant,

v.

COLUMBIA PICTURES INDUSTRIES, INC., a Delaware Corporation,

Defendant-Appellee.

Before: THOMPSON, SILVERMAN, and WARDLAW, Circuit Judges.

The panel, as constituted above, has unanimously voted to deny the petition for panel rehearing filed by Mario Moreno Ivanova and the Estate of Mario Moreno Reyes ("appellants"). Judges Silverman and Wardlaw have also voted to deny the appellants' petition for rehearing by the court en banc, and Judge Thompson has recommended denial of that petition.

Appendix G

The full court has been advised of the petition for court rehearing en banc, and no judge of the court has requested en banc rehearing. See Fed. R. App. P. 35(b).

The petitions for panel rehearing and for rehearing by the court en banc are DENIED.

The motion filed by Mexican Institute of Cinematography for leave to file an amicus curiae brief is DENIED.

APPENDIX H — WARRANT FOR ARREST FROM THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA DATED JULY 11, 2003

2003

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

EDUARDO LAPARADE
Plaintiff(s)

v.

Columbia Pictures, Inds. Inc
Defendant(s)

CASE NUMBER: CV 00-615-WJR (CTx)

WARRANT FOR ARREST

TO: UNITED STATES MARSHAL AND ANY AUTHORIZED UNITED STATES OFFICER

YOU ARE HEREBY COMMANDED to arrest MARIO Arturo MORENO IVANOVA aka Mario MORENO and bring him/her forthwith to the nearest Magistrate Judge to answer a(n): ☐ Complaint ☐ Indictment ☐ Information ☒ Order of Court ☐ Probation Violation Petition ☐ Violation Notice charging him/her with: (ENTER DESCRIPTION OF OFFENSE BELOW)

FAILure to comply with the permanent Injunction and the March 31, 2003 and April 28, 2003 Court Orders.

in violation of Title 18 United States Code, Section(s) 3146(a)(1)

Sheri R. Carter
NAME OF ISSUING OFFICER

Clerk of Court
TITLE OF ISSUING OFFICER

SIGNATURE OF DEPUTY CLERK

—0—
BAIL FIXED AT

U.S. Courthouse, 312 No. Spring Street, L.A. CA
DATE AND LOCATION OF ISSUANCE

BY: WILLIAM J. REA
NAME OF JUDICIAL OFFICER

RETURN

THIS WARRANT WAS RECEIVED AND EXECUTED WITH THE ARREST OF THE ABOVE-NAMED DEFENDANT AT (LOCATION):

DATE RECEIVED

NAME OF ARRESTING OFFICER

DATE OF ARREST

TITLE

DESCRIPTIVE INFORMATION FOR DEFENDANT CONTAINED ON PAGE TWO

SIGNATURE OF ARRESTING OFFICER

WARRANT FOR ARREST

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Appendix H

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

EDUARDO LAPETRADE
Plaintiff(s)

v.

Columbia Pictures, Inds. Inc
Defendant(s)

CASE NUMBER: CV00-615-WJR (CTx)

WARRANT FOR ARREST

ADDITIONAL DEFENDANT INFORMATION

RACE:	SEX:	HEIGHT:	WEIGHT:	HAIR:	EYES:	OTHER:	
DATE OF BIRTH:		PLACE OF BIRTH:		SOCIAL SECURITY NO.		DRIVER'S LICENSE NO.	ISSUING STATE
ALIASES:		SCARS, TATTOOS OR OTHER DISTINGUISHING MARKS:					
AUTO YEAR:	AUTO MAKE:	AUTO MODEL:		AUTO COLOR:		AUTO LICENSE NO.	ISSUING STATE
LAST KNOWN RESIDENCE:				LAST KNOWN EMPLOYMENT:			
FBI NUMBER: ADDITIONAL INFORMATION:							
INVESTIGATIVE AGENCY NAME:				INVESTIGATIVE AGENCY ADDRESS:			

NOTES:

SEE ATTACHED FOR ADDITIONAL INFORMATION

Appendix H

-v-

Columbia Pictures Indo, Inc.

THE FOLLOWING IS FURNISHED FOR INFORMATION ONLY:

DEFENDANT'S NAME: Mario Arturo Moreno Ivanova

ALIAS: Mario Moreno

LAST KNOWN RESIDENCE: Loma Linda, Vista Hermosa, Mexico City, Mexico 05100

LAST KNOWN EMPLOYMENT: none

PLACE OF BIRTH: Mexico (?)

DATE OF BIRTH: 1960

SOCIAL SECURITY NUMBER: Mexican Taxpayer ID: MOIM 600901

HEIGHT: 6'0" WEIGHT: 300+ lbs.

SEX: M RACE: Hispanic/Caucasian

HAIR: Blond/Light Brown EYES: Hazel

SCARS, TATTOOS, OTHER DISTINGUISHING MARKS: none

FBI NUMBER: n/a

COMPLETE DESCRIPTION OF AUTO: n/a

INVESTIGATIVE AGENCY AND ADDRESS: